

### REMARKS

Applicant has carefully studied the Office Action of August 25, 2005, and offers the following remarks in response thereto.

#### Rejection Under 35 U.S.C. § 102(e) – Smith

On page 2 of the Office Action mailed on August 25, 2005, claims 29-35 and 49-58 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,717,374 to Smith (hereinafter “Smith”). Applicant respectfully traverses, because Smith clearly fails to disclose each and every element as set forth in the actual claims of the present invention. The following discussion is geared towards independent claims 29, 49, and 58, since these claims form the basis of what is missing in Smith.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP § 2131. Further, even if these characteristics are inherent (a point that Applicant does not concede), the Patent Office must show extrinsic evidence to make clear that the missing descriptive matter is necessarily present in the cited reference. *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991); MPEP § 2131.01. In other words, inherency cannot be established by probabilities or possibilities and the mere fact that a certain thing may result from a given set of circumstances is not sufficient. *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999); MPEP § 2163.07.

Claims 29, 49, and 58 of the present invention claim that a web browser is executed as a thin client on the interactive graphical user interface of a fuel dispenser. These claims also set forth that information is displayed to a customer at the graphical user interface of the fuel dispenser in response to receipt of a markup language from a server or data source. As one example disclosed in the application on page 7, line 29 - page 8 lines 19, a web browser is a software tool that utilizes a hypertext transfer protocol (HTTP) to submit and fetch web-pages to and from web servers. Additionally, a standard page description markup language, such as hypertext markup language (HTML) or extended markup language (XML) for example, is used to provide basic documentation formatting of a web page and other information viewable in the web browser. Further, it is known that a markup language also allows a developer of these

documents to specify links to other servers and files within the network, specifically the Internet/Worldwide Web network.

Unlike the present invention, Smith does not teach or suggest a browser. Smith discloses a method and apparatus for inputting messages and other information, such as advertisements, to a vehicle while the vehicle is coupled to a local recharging or refueling station. (Column 2, lines 37-42). On page 3 of the Office Action mailed August 25, 2005, the Patent Office states that Smith shows "executing a web browser as a thin client on said interactive graphical user interface (fig. 9, element 52a)." However, element 52a is merely demonstrating a communication network that allows for the exchange of information. The language of Applicant's claim is not claiming the inventive concept of a communication network for exchanging information. More specifically, there is no descriptive evidence in Smith which would infer that element 52a executes a web browser as a thin client on the interactive graphical user interface at a fueling position. Additionally, it is not inherent that a web browser is necessarily present, as is required by the standard set out above, since there is more than one way to exchange information within a communication network.

Additionally, the Patent Office claims that Smith discloses "displaying information to a customer at graphical user interface in response to receipt of a markup language from a server...(col. 11, line 31 to col. 12, line 29)." Although Smith discloses transferring files in, shown as element 52b of Figure 9, Smith does not disclose that these files are exchanged by implementing a web browser that enables a customer to interact with markup language files. Further, Smith does not disclose any one of the multitude of transfer protocols that could be used in exchanging information between the vehicle or fuel dispenser and a server/data source, wherein this information is displayed to a customer at a graphical user interface of a fuel dispenser using a web browser. The lack of disclosing these elements demonstrates that Smith has no intention of implementing a web browser for displaying information to a vehicle or, much less, executing a web browser as a thin client on an interactive graphical user interface of a fuel dispenser. Since there are numerous ways of transferring files and displaying information to a customer at a fuel dispenser, Smith also fails to inherently disclose executing a web browser to display information on the graphical user interface of a fuel dispenser.

In this manner, Smith fails to show at least the elements of executing a web browser as a thin client on the interactive graphical user interface of the fuel dispenser and displaying

information to a customer in response to receipt of a markup language received from a server/data source. Therefore, claims 29, 49, and 58 are allowable for at least these reasons.

Claims 30-35 and 50-57, which depend directly or indirectly from claims 29, 49, and 58, are allowable for at least the reasons argued above as well. Applicant reserves the right to make future arguments about further patentable distinctions between the present invention and the above-cited reference.

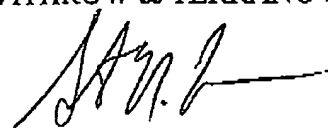
#### **Additional Case History Remarks**

In addition to the arguments discussed above, Applicant wishes to point out to the Examiner that similar rejections relating to the concept of executing a web browser as a thin client on a graphical user interface of a fuel dispenser have been overcome in previous office actions. (Office Actions mailed December 1, 2004; December 16, 2003; June 10, 2003). Further, the reference cited by the Examiner in this Office Action (Smith) does not cure the deficiencies that were also apparent in the previously cited references. As stated in the previous Office Action responses and reiterated here, at the time of the invention, namely, prior to July 1997, there was no general knowledge to incorporate a web browser into a fuel dispenser, nor was there any suggestion in the general knowledge of someone in the fueling industry or in the above-cited reference to incorporate such technology into the fueling environment. Therefore, Applicant earnestly solicits claim allowance upon this contention, since the history of this case clearly demonstrates that this invention was novel and unobvious at the time the application was filed for the present invention.

Respectfully submitted,

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Date: January 17, 2006  
Attorney Docket: 2400-505

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